IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLN.NO.531 OF 2007

Shri.Kunal Madhukar Jagtap ..Applicant

Vs.

State of Maharashtra ..Respondents

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Mr.Vikas Shivankar Advocate for Applicant
Smt.A.S.Pai, A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : APRIL 3, 2007

P.C.

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

2. The applicant is seeking bail in C.R.No.275 of 2006 of Pimpri Police Station. The said case is mainly under Section 376 of IPC.

3. It is the prosecution case that the applicant took the prosecutrix from Pune to West Bengal and there, he committed rape on the prosecutrix. It is further the prosecution case that prosecutrix was 13 years old at the time of the incident. In the

present case, the investigation is over and charge sheet is filed.

4. I have perused the material gathered by the prosecution. The material on record prima facie shows that it was a case of consent. While the prosecutrix was taken from Pune to West Bengal, at no point of time, she tried to seek help from the police or made any complaint to anyone. In fact, in the intervening period, she had made telephone calls to others wherein she had asked about the well being of her parents. Even while she made this telephone calls, she did not seek any help or make any complaint.

5. As far as the age of the prosecutrix is concerned, the learned advocate for the applicant has placed reliance on the missing report filed by the father of the prosecutrix before Pimpri Police Station. In the said missing report, the date of birth of the prosecutrix is shown as 20.1.1990. So also, the photograph of the prosecutrix is annexed to the missing report. Below the said photograph, it is mentioned that the photograph was taken about 3 to 4 years prior to the missing report. If one

peruses the photograph and the facts mentioned in the missing report, it appears that the prosecutrix was over 16 years of age at the time of the incident. No doubt, in the F.I.R. the father of the prosecutrix has stated that she was a minor and reliance is place on some birth date extract. However, looking to the missing report lodged by the father of the prosecutrix, it appears that thereafter the father as an after thought, has tried to show that the prosecutrix was a minor. Looking to all these facts, I am inclined to grant bail to the applicant.

6. In connection with C.R.No. 275 of 2006 of Pimpri Police Station, the applicant to be released on bail in the sum of Rs.20,000/- (Rs.Twenty Thousand only) with one or two sureties to make up the said amount. The applicant shall report to Pimpri Police Station once in a fortnight till the conclusion of trial.

7. Application is disposed of.

[V.K.Tahilramani, J.]